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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted]

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,
A District of Columbia Corporation, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above entitled case on January 20, 1960.

OPINION BELOW

The opinion of the Court of Claims (Appendix, pp. A1-A8 *infra*, R. 93-99) is reported at 180 F. Supp. 379.

JURISDICTION

The judgment of the Court of Claims was entered on January 20, 1960 (R. 175). A Motion for Rehearing filed on February 18, 1960 (R. 177-180) was denied on April 6, 1960 (R. 183). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1255(1).

QUESTIONS PRESENTED

1. Whether, where a non-profit corporation organized and operated exclusively for educational purposes includes among its activities the study and discussion of public issues and in some instances the adoption through democratic processes of positions on legislation, such activities constitute "carrying on propaganda, or otherwise attempting to influence legislation" within the meaning of Section 812(d) of the Internal Revenue Code of 1939.

2. Whether a substantial part of the activities of the League of Women Voters of the United States consisted of "carrying on propaganda, or otherwise attempting to influence legislation" so as to render bequests to such corporation ineligible for the estate tax deduction provided in Section 812(d) of the Internal Revenue Code of 1939.

STATUTE INVOLVED

SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * * * * * *

(d) *Transfers for Public, Charitable, and Religious Uses.*—The amount of all bequests, legacies,

devises, or transfers, to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. * * *. (26 U.S.C. 1952 ed., Sec. 812.)

STATEMENT

The will of Ann Webster, a resident of New Mexico, who died on November 2, 1949, named the League of Women Voters of the United States as sole legatee of her residuary estate (Fdg. 1, R. 105). The estate was required to pay, and on July 1, 1952 did pay, a Federal estate tax based upon the value of the net estate without allowing a deduction for the bequest to the League. No estate tax would have been due had such bequest been allowed as a deduction (Fdg. 2, R. 105). On September 13, 1954 the League, as sole residuary legatee of the estate, filed a timely claim for refund of the estate tax (Fdg. 4, R. 106). No refund was made and on May 29, 1956 the League petitioned the Court of Claims for a refund of the estate tax (Fdg. 4, R. 106). The Court of Claims found, two judges dissenting, that the tax deduction was not allowable to the estate because a substantial part of the activities of the League was the influencing of legislation.

The League of Women Voters of the United States is organized under Chapter 6 of Title 29 of the District of Columbia Code, which authorizes the formation of non-profit charitable, educational and religious corporations. The League is publicly supported, and

operates for the benefit of the general public and not for the benefit of private individuals. It does not engage in party politics. Its Articles of Incorporation provided in 1949, and still provide, as follows (Fdg. 6(a), R. 106):

> The business and objects of the corporation shall be to promote political responsibility through informed and active participation of citizens in government; to render such other services in the interest of education in citizenship as may be possible; and to do every act appropriate or necessary to carry out any of the foregoing objects.
>
> The corporation shall not support or oppose any political party or candidate.

The relevant by-laws provided in 1949, and still provide, as follows (Fdg. 6(b), R. 106):

> SEC. 1. *Purpose.*—The purpose of the League of Women Voters of the United States shall be to promote political responsibility through informed and active participation of citizens in government.
>
> SEC. 2. *Policy.*—The League may take action on governmental measures and policies in the public interest. It shall not support or oppose any political party or candidate.

The League's stated purposes "to promote political responsibility through informed and active participation of citizens in government" and to render "services in the interest of education in citizenship" are effected in many ways. The League compiles and presents in factual form the records and platforms of candidates for public office (Fdg. 39(b)(7), R. 152; Fdg. 47(a)(3), R. 165), arranges meetings at which voters may meet, hear and question candidates (Fdg.

3)(b)(7), R. 152), and educates the public in a variety of ways about the importance of registering and voting (Fdg. 16, R. 124-125; Fdg. 53(2)(h), R. 172). Members of the League and the general public are also instructed in the functions of government and public institutions through study groups and seminars on such topics as "Know Your State," "Know Your County" and "Know Your Town Government" (Fdg. 13(a), R. 118-119; Fdg. 18(a), R. 127).

The League's program of education in the responsibilities of citizenship includes not only a study of the structure and mechanics of government, but also consideration of problems facing local, state and federal governments, as well as the nations of the world (Fdg. 13(c), R. 119-120). This consideration of public issues, the inevitable end-product of study and discussion, is developed through the rigorous democratic processes of the League's program system.

The Program of the League is developed by means of a series of recommendations originating at the League's grass roots level (Fdg. 11(a), R. 108-109). The local Leagues and State Leagues, after study and discussion, make program recommendations to the national League, which in turn works out a tentative Program. This tentative Program is submitted to the local and state Leagues for further consideration and recommendations. The national League then presents a proposed Program to the National Convention of the League of Women Voters. If the convention adopts the Program, it becomes the Program of the League (Fdg. 11, R. 108-110).

The Program which is adopted by the convention consists of the "Current Agenda" and "The Platform." The Current Agenda indicates the topics upon

which the League has decided to concentrate its activities during the next two years. The Platform comprises topics on which the League has taken a stand in the past and on which it proposes to maintain its stand, although it may not pursue any activities in furtherance thereof (Fdg. 11(b), R. 109-110).

Where the League undertakes the study of a topic, there is no *a priori* determination of whether a position will ultimately be adopted, much less of what such position may be. Each topic is carefully studied and every attempt is made to ascertain all of the relevant facts (Fdg. 13(a), R. 117-118). Many of the topics on the League's Program involve no legislation or proposed legislation and merely envisage educational campaigns (Fdg. 12, R. 110-117). In the case of some topics no League position is ever adopted and nothing further is done (Fdg. 13(b), R. 119; Fdg. 21, R. 132). Where a position is finally adopted, the League usually prepares and publishes informational material and from time to time sponsors conferences at which such material may be utilized. It may also issue a "Request for Action," which asks that the members of the League voice their individual views with their legislative representatives or exercise their franchise in support of such position (Fdg. 15(a), R. 121). Finally, in certain isolated cases, the League itself may undertake to contact legislators directly or to make statements before legislative bodies (Fdg. 22(g), R. 134-137). These activities, the Requests for Action and the direct legislative contact and statements, involve less than two percent of all the League's activities, whether measured by proportion of time devoted thereto or by proportion of League expenditures (Fdg. 23(a), (b), R. 137; Fdg. 24, R. 139).

All five judges of the Court of Claims held that the League was, in fact, an educational organization. However, the majority, speaking through Judge Madden, two judges concurring, considered that all of the activities of the League in deliberating and discussing questions of public interest and what position, if any, should be taken on such questions, constituted preparation for the influencing of legislation. In other words, all action from the time of the adoption of the Program was held to be taken for the purpose of influencing legislation, even when such action largely consisted of study, discussion and dissemination of information (Appendix, pp. A7-A8, R. 99). Thus the Court found that, although the activities of the League were the "most useful and laudable kind" of educational activity, a bequest to the League of Women Voters did not qualify for the tax deduction under Section 812(d) of the Internal Revenue Code of 1939.

This reasoning did not convince Chief Judge Jones and his predecessor, former Chief Judge Littleton, who joined in a dissenting opinion (Appendix, pp. A8-A-15, R. 99-104). Chief Judge Jones stated that the statute was not intended to disqualify an organization, such as the League, which attempts to promote general policies and principles of government that may be implemented by legislation or by other practices and customs inuring to the benefit of all citizens and tending to promote sound government. He further declared (Appendix, p. A11, R. 101-102):

> We cannot believe it was the intention of the Congress to deny an exemption to an otherwise qualifying organization merely because it seeks in some instances, in a wholly unselfish manner, to translate principles of government into the form of legislation, when the organization will derive

no special benefit from that legislation. The language does not require it, and certainly the interests of the Nation would not be served if this organization should cease to take an interest in public affairs.

An alternative ground for the dissenting opinion was that the legislative activities of the League were, in any event, insubstantial in comparison to its general educational activities. Upon the basis of the Findings of Fact, which show that not more than two percent of the League's activities involved contacts with legislators, advocacy of specific legislation and requests for membership action on such legislation, the minority concluded that only "a very small part of the activities of the organization as a whole is devoted to influencing legislation. . . ." (Appendix, pp. A14-A15, R. 104).

REASONS FOR GRANTING CERTIORARI

A. The Court below erroneously determined a question of national importance in the application of provisions of the Internal Revenue Code relating to deductions for contributions to educational and charitable organizations.

B. The decision below is in conflict with decisions of the Courts of Appeals for the Sixth and Second Circuit.

A. Section 812(d) of the Internal Revenue Code of 1939 grants an estate tax deduction for contributions to non-profit educational organizations, provided that no substantial part of their activities consists of "carrying on propaganda, or otherwise attempting to influence legislation." The Court below has interpreted this clause in such manner as to foreclose the possibility of deducting contributions to any organization which seeks to provide practical education in the responsibilities of citizenship. Since there is no area of education more vital to the well-being and survival

of our democratic society than the study of governmental problems and training in the duties of citizenship, an interpretation of the revenue laws which dries up the sources of support for such educational programs is detrimental to the welfare of this nation.

For decades both the estate and income tax laws have contained substantially identical provisions allowing a deduction for contributions to non-profit religious, charitable, scientific, literary and educational organizations. In 1934 the limitation was added that no substantial part of the activities of such organizations may consist of "carrying on propaganda, or otherwise attempting to influence legislation." In applying such limitation it is necessary to determine (a) what kinds of activity fall within the proscribed legislative category, and (b) how much of such activity an organization may carry on before the amount becomes "substantial."

In the trial of the case below the League acknowledged that its advocacy of specific legislation in its publications, its calls upon the membership to communicate their views to legislators, its contacts with legislators and statements before legislative bodies, as well as certain other actions,[1] constituted "attempt-

[1] Paragraph 22 (g) of the Findings of Fact of the Court of Claims describes the League's legislative category, which comprises not more than two percent of the League's total activities (Fdg. 23(a), (b), R. 137), as follows (Fdg. 22(g), R. 134):

> (g) *Legislative.*—This category consists of time spent in following specific measures or bills pending in Congress in which the League was interested, as well as all time devoted to taking action on such bills after a position had been taken thereon. As hereinabove noted, the time devoted to study, research, or dissemination of information on such measures or bills prior to the time the League actually took a position thereon is not included in this category. However, all time

ing to influence legislation." The League insisted, however, that its study and discussion of public issues, which provided enlightenment on a variety of contemporary problems and resulted in some instances in the adoption of a position favoring or opposing particular legislation, were an indispensable part of educating women in the responsibilities of citizenship and were not the kind of activity which Congress had in mind when it limited the amount of permissible legislative activity. This standard is consistent with the Treasury's own regulations to the pertinent sections of the Internal Revenue Code of 1954, the language of which is identical to the language in issue under the 1939 Code. Section 1.501(c)(3)-1(c)(3)(ii) of the regulations states:

> . . . an organization will be regarded as attempting to influence legislation if the organization:
>
> (a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
>
> (b) Advocates the adoption or rejection of legislation.[2]

spent in preparing that part of the League's publications indicating a League position on legislation, such as the "Congressional Spotlight" section in "Action", as set forth in finding 18 (b), is included. General statements or articles setting forth the League's position in favor of an item, such as the United Nations, or any component part thereof, such as the World Health Organization, has not been included in this category in situations where the statement or article did not relate to any specific bill then pending which the League was supporting or opposing.

[2] Testimony given in 1954 by an Assistant Commissioner of Internal Revenue before the Special Committee of the House of Representatives to Investigate Tax Exempt Foundations and Comparable Organizations indicates that the current regulations reflect

By this standard, the record below and the Findings of Fact of the Court of Claims Commissioner who heard the case incontrovertibly establish that less than two percent of the activities of the League of Women Voters constitute "attempting to influence legislation" (Fdg. 23(a), (b), R. 137). No one has seriously contended that two percent is substantial.

It is also clear from the record and the Findings of Fact that the League's primary purpose is educating women in the responsibilities of citizenship.[3] The ma-

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a long-standing policy. The following statement is particularly pertinent:

> Actually, our statutory base is the language of propaganda or otherwise attempting to influence legislation. The qualification there, of course, is that the statute denies exemption only if a substantial part of the activity of the organization is lobbying. So that the type of general education—public education—which an organization may propagate, which may end up in people expressing their views to the Congress generally, would not come within the category of lobbying, unless it is directed particularly to that end or takes the form particularly of letters or telegrams and so forth, from the organization to the Members of Congress. (Hearings on H. Res. 217, 83d Cong., 2d Sess., 1954, p. 437.)

[3] The current Treasury Regulations give the following definition of "education":

> (3) *Educational defined*—(i) *In general.* The term "educational", as used in section 501(c)(3), relates to:
>
> (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
>
> (b) The instruction of the public on subjects useful to the individual and beneficial to the community.
>
> An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion. (Treas. Reg. Sec. 1.501(c)(3)-1(d)(3).)

jor part of its program involves areas unrelated to legislation, such as studying the operations of local, state and federal governments and international agencies, and providing the electorate with impartial information relevant to their voting responsibilities. Yet, because the League in some instances, after months of study and discussion, does take a stand on public issues, including legislation, the majority below has treated the whole educational process as an attempt to influence legislation.[1] By thus letting the tail wag the dog, the majority has found the League's legislative activities to be "substantial."

Under the majority view no organization educating in the field of government could meet the requirements of the statute unless it limited itself to abstract theory and to uncritical discussions of government forms and mechanisms—in other words, to educating in a vacuum. Any deliberation concerning the great public issues of the day which might affect a person's stand on legislation, no matter how objectively handled, would, under the majority view, necessarily introduce a substantial element of "attempting to influence legislation" and thus disqualify the educational organization from the benefits of the statute.

To maintain a tax exemption under the decision of the majority, the League would have to become a mere disseminator of information, devoted to "pure and purposeless research" (Appendix, p. A8, R. 99). Without the impetus and opportunity given to League mem-

[1] The majority opinion appears to stigmatize as attempts to influence legislation even the preparation, study and discussion of the vast amount of material of a general informational nature on such topics as the United Nations, world trade and fiscal policy although such material for the most part does not deal with legislation (Appendix, pp. A5-A8, R. 96-99).

bers to act upon their political ideas, the League members would become mere passive depositories of such information. In the educational process, it is the doing of an act which teaches how to act, and it is the exchange of ideas, the dialectic testing of ideas, by which thinking processes are refined and ideas are evaluated. By erroneously extending the definition of "influencing legislation" to the League's educational functions and process, the Court of Claims and the Commissioner of Internal Revenue have penalized activities which are vital to a democratic society.

Notwithstanding the reasonable dividing line indicated in the current regulations, the Commissioner of Internal Revenue appears to have developed a rigid attitude with respect to those educational organizations which seek to educate the electorate in political and governmental matters. Since the decision was rendered in the instant case, the Commissioner has gone so far as to rule that deductions are not allowable for contributions made to an organization whose activities consisted of distributing educational materials to schools and conducting non-partisan seminars and workshops on the campuses of colleges and universities on the subjects of politics and government. Rev. Rul. 60-193, 1960-20 Int. Rev. Bull. p. 24.

It is important to the survival of some of the most useful and most highly respected educational and charitable institutions in the United States that the interpretation of the statute be clarified and corrected.

B. The Supreme Court should grant certiorari to review the decision below because it is in conflict with decisions of the United States Courts of Appeals for the Sixth and Second Circuit.

The Seasongood Case. In the case of *Seasongood v. Commissioner of Internal Revenue*, 227 F. 2d 907 (6th

Cir. 1955), rev'g 22 T.C. 671 (1954), the Circuit Court held that a contribution to the "Hamilton County Good Government League" was deductible for income tax purposes.[3] The stated purposes of this organization were to provide an opportunity for discussion of matters of civic importance and to advance good government. The Tax Court and the Circuit Court were in agreement that the Hamilton County Good Government League was an educational organization and that its aims were principally charitable or educational. However, the Tax Court found that the work of the organization in investigating and actively sponsoring or opposing proposed legislation required a denial of tax exempt status. The Circuit Court found, on the other hand, that in view of the overall unselfish purposes and activities of the organization, the "political activities," which were less than five percent of all of the activities of the organization, were not substantial within the meaning of the exemption statute.

In the *Seasongood* case the activities of the Hamilton County Good Government League in carrying on public forums, discussions and educational programs on questions of public interest were not considered to be legislative in nature *despite* the fact that such activities led to an insubstantial amount (five percent) of direct legislative activity. Conversely, the Court below held that the activities of the League of Women Voters in studying, discussing and disseminating factual information about questions of public interest were legislative in

[3] The test of deductibility for income taxes provided in Section 23(o) of the Internal Revenue Code of 1939 was the same as that in Section 812(d); the contribution had to be made to an organization "operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * * and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation."

nature *because* such activities led to an insubstantial amount (two percent) of direct legislative activity. This is the area of square conflict between the two cases.

The Dulles Case. The decision of the Second Circuit in the case of *Dulles* v. *Johnson*, 273 F. 2d 362 (2d Cir. 1959), likewise conflicts with the holding of the Court below. In the *Dulles* case, the Commissioner of Internal Revenue contested the deductibility under Section 812(d) of bequests to Bar Associations on the theory that a substantial portion of the Associations' activities were devoted to the influencing of legislation. The Second Circuit found that the legislative activity of the Associations did not result in nondeductibility of the bequests because (1) the Associations were not intending through such activity to serve any selfish purpose, but rather to improve court procedure and clarify substantive law, and (2) the legislative activity involved was a small portion of the total activity of the Associations. The Court declared as follows (273 F. 2d at 367):

> These activities serve no selfish purpose of the legal profession—rather they constitute an expert's effort to improve the law in technical and non-controversial areas. In our opinion these activities are scientific, educational and charitable.
>
> The Government argues that these activities constitute propaganda and represent a substantial part of all the activities of the Associations. The cases upon which the Government relies are inapposite. Those cases involved organizations whose principal purpose was to implement legislative programs embodying broad principles of social amelioration. [Citations omitted] Here, on the other hand, approval of or opposition to proposed legislation constitutes but a small portion of the

> total activity of the Associations. Hence this case is closer to *Seasongood* v. *C. I. R.*, 6 Cir., 1955, 227 F. 2d 907. Moreover, the legislative recommendations of the Associations, insofar as these recommendations do not involve matters the responsibility for which has been entrusted to the Associations by the Legislature, are designed to improve court procedure or to clarify some technical matter of substantive law. They are not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy. These two factors leads us to the conclusion that the recommendations of the Associations concerning impending legislation are not such as to cause the forfeiture of charitable status under Section 812(d).

In the *Dulles* case the purposes and motives of the Associations constituted a crucial factor. The Court emphasized that the legislative activities of the Associations served no selfish purpose but rather were performed in the public interest.[6] Such holding squares precisely with the dissent in the instant case and with the following language of Chief Judge Simons in the *Seasongood* case (227 F. 2d at 911, 912):

> And what is meant by "otherwise attempting to influence legislation"? The statute does not elucidate the phrase and no legislative history has been cited to throw light upon it. In one sense, nearly

[6] The minority opinion of the Court of Claims in the instant case (Appendix, p. A12, R. 102-103) makes reference to Congressional debate indicating that the amendments to Code Sections 812(d) and 23(o) adopted in 1934 were not intended to disqualify organizations like the League whose interest in legislation did not arise from selfish motives (Congressional Record, Vol. 78, part 6, page 5861, April 2, 1934), but rather to reach "organizations which are receiving contributions *in order to* influence legislation and carry on propaganda" (Congressional Record, Vol. 78, part 6, page 5959, April 4, 1934). (Emphasis supplied)

> every effort made by individuals or organizations in the public interest and for the betterment of government necessarily, has as an indirect result at least, some influence on legislation .... So, here, the method of influencing legislation must be considered and there is nothing in the findings of fact that either challenges the validity, the good faith purpose, or any untoward result in the communications addressed by the League either to its members, public opinion generally, or to legislative or administrative officers. Nothing in the record indicates lobbying, influence peddling or illegal or unethical pressures upon legislators. Little is disclosed other than letters to the Governor and an appearance before a legislative committee.

Two of the judges in *Seasongood* disagreed with the above-quoted portion of Chief Judge Simons' opinion. Thus their view and the view of the majority below conflict with the holding in the *Dulles* case.

The League of Women Voters filed a Motion for Rehearing on the ground of conflict with the *Dulles* case, which had not been decided until after oral argument before the Court of Claims. The government's Memorandum in Opposition to such Motion did not deny the existence of a conflict, but merely stated (R. 181): "The *Dulles* case is wrong."

On June 23, 1960, the Government filed a conditional petition for certiorari in the *Dulles* case (Petition No. 1030), in which the Government again asserted that the *Dulles* case was erroneously decided (p. 6). The implication is clear that the Government will continue to contest the deductibility of donations to bar associations, notwithstanding the *Dulles* case.

In conclusion, it should be noted that the League of Women Voters has been held to be a tax-exempt educa-

tional organization in the following lower court cases: *Liberty National Bank and Trust Co.* v. *United States*, 122 F. Supp. 759 (W. D. Ky. 1954); *Charles W. Dahlinger*, 20 B.T.A. 176 (1930); and *Luther Ely Smith*, 3 T. C. 696 (1944).[7] Contra, *Henriette T. Noyes*, 31 B.T.A. 121 (1934). In *Liberty National Bank* the Court declared as follows (122 F. Supp. at 766):

> In urging the citizenship within the area of its influence to qualify as voters and to be informed upon the issues settled by exercise of the suffrage of the electorate, the League has rendered invaluable services in the fight against carelessness and indifference in public affairs. If upon sporadic occasions the zeal of its members has invaded the prohibited area of attempting to influence legislation, this becomes of little consequence viewed against the background of the whole of their efforts in behalf of better government.

Inasmuch as the decisions of two circuit courts conflict with the holding of the majority of the Court of Claims below, the proper administration of the law requires that the conflict be settled.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari be granted.

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[7] The Commissioner of Internal Revenue acquiesced in the *Smith* case in 1944 Cum. Bull. 26. This acquiescence was specifically reconfirmed in 1958-1 Cum. Bull. 7, note 21.